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ECF FILING

October 13, 2016

Hon. Valerie Caproni
United States District Judge
Southern District of New York
40 Foley Square, Courtroom 443
New York, New York 10007

Re: *Patriarch Partners, LLC v. AXIS Ins. Co.*, 16 Civ. 02277 (VEC)

Dear Judge Caproni:

The parties to the above-referenced action, plaintiff Patriarch Partners, LLC (“Patriarch”) and defendant AXIS Insurance Company (“AXIS”), submit this joint letter in accordance with paragraph 10 of the Civil Case Management Plan and Scheduling Order, entered on April 29, 2016 (Docket No. 22).

I. Statement of Existing Deadlines and Due Dates

- September 26, 2016: Deadline for the completion of fact discovery as to issues of liability.¹

The initial deadline of July 28, 2016, was extended for purposes of scheduling and conducting depositions. *See* Order Granting Application, dated July 8, 2016 (Docket No. 27).

- October 21, 2016: Pretrial conference.
- November 11, 2016: Deadline for the completion of expert discovery. Patriarch has disclosed an expert, who is scheduled for deposition on October 18, 2016. AXIS thereafter may provide a rebuttal expert report. The parties believe the deposition (if needed) can be completed before November 11, 2016 but have not secured a date yet.

¹ Exempted from this deadline is discovery pertaining to the warranty Patriarch provided in connection with its purchase of the AXIS insurance policy. As set forth in the Stipulated Order entered by the Court on October 3, 2016, fact and expert discovery into the warranty is deferred until after a decision on the parties’ anticipated summary judgment motions. *See* Stipulated Order (Docket No. 46).

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II. Outstanding Motions

There are no outstanding motions. As the Court is aware, AXIS has raised certain discovery issues with the Court via telephone conference on September 20, 2016, and several of those issues remain unresolved and are addressed in the next section.

III. Status of Discovery

The parties have exchanged documents and written discovery as to the issue of liability² and have conducted depositions of 9 witnesses. On October 5, 2016, AXIS conducted a short continuation of the deposition of one of these witnesses, the broker for Patriarch. On September 26, 2016, AXIS advised that it seeks to reopen the deposition of Patriarch's outside counsel in the SEC matter, Susan Brune. Patriarch opposes this request, and this issue may need to be discussed at the pretrial conference.

There is an ongoing dispute as to certain documents requested by AXIS. The parties are attempting to resolve this dispute, and will update the Court as to any outstanding document discovery issues at the pretrial conference. AXIS intends to raise any outstanding document issues with the Court at the status conference and would be willing to submit a letter brief in advance of the conference if the Court so requests. Otherwise, the parties will be prepared to address any remaining discovery issues with the Court at the pretrial conference.

IV. Settlement Discussions

The parties engaged in private mediation prior to the filing of this case, which may be resumed at an appropriate point in the future.

V. Statement of Trial Length and Type (Jury Trial)

The parties cannot predict the anticipated length of the trial at this point in time, but believe that they will be better equipped to assess this issue after a decision on the anticipated summary judgment motions.

Patriarch has requested a jury trial.

VI. Anticipated Motion Practice

A. Summary Judgment: The parties intend to file motions for summary judgment. after completing expert discovery. The parties will be prepared to discuss a briefing schedule at the pretrial conference.

² With the exception of discovery as to the warranty which is deferred pursuant to the Stipulated Order, entered by the Court on October 3, 2016. *See supra*, note 1.

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B. Motion to Exclude Expert Testimony: At this stage, the parties have just begun to engage in expert discovery and cannot adequately predict whether motions to exclude expert testimony will be necessary. The parties will assess this issue once expert discovery fully has been completed.

Respectfully submitted,

/s/ Luma Al-Shibib

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